

**AMENDMENTS TO THE CLAIMS**

**This listing of claims will replace all prior versions and listings of claims in the application:**

**LISTING OF CLAIMS:**

1. (currently amended): A positive active material for a non-aqueous electrolyte secondary battery, comprising a lithium-nickel composite oxide represented by the compositional formula  $\text{Li}_a\text{Ni}_{1-b-c}\text{Co}_b\text{Mn}_c\text{O}_2$  (in which the suffix a is not greater than 1.09, the suffix b is from not smaller than 0.05 to not greater than ~~0.35~~ 0.25, and the suffix c is from not smaller than ~~0.15~~ 0.2 to not greater than 0.35, and the sum of b and c is from not smaller than 0.25 to not greater than 0.55) having a hexagonal structure, wherein

when subjected to X-ray diffractometry with a  $\text{CuK}\alpha$  ray, said lithium-nickel composite oxide exhibits an intensity ratio  $R ((I_{012} + I_{006})/I_{101})$  of not greater than 0.50 and not less than 0.422, R being the ratio of the sum of the diffraction peak intensity  $I_{012}$  on the 012 plane and the diffraction peak intensity  $I_{006}$  on the 006 plane to the diffraction peak intensity  $I_{101}$  on the 101 plane[[.]], said positive active material has a mean particle diameter  $D_{50}$  of from 4  $\mu\text{m}$  to 25  $\mu\text{m}$  and a BET specific surface area of from 0.2 to 1.5  $\text{m}^2/\text{g}$ .

2. (canceled).

3. (canceled).

4. (canceled).

5. (previously presented): A positive active material for a non-aqueous electrolyte secondary battery, comprising a lithium-nickel composite oxide represented by the compositional formula  $\text{Li}_a\text{Ni}_{1-b-c-d}\text{Co}_b\text{Mn}_c\text{M}_d\text{O}_2$  (in which M is at least one metal element selected from the group consisting of Al, Ti, W, Nb and Mo, the suffix a is not greater than 1.09, the suffix b is from not smaller than 0.05 to not greater than 0.35, the suffix c is from not smaller than 0.15 to not greater than 0.35, and the suffix d is from greater than 0 to not greater than 0.35, and the sum of b, c and d is from not smaller than 0.25 to not greater than 0.55) having a hexagonal structure, wherein

when subjected to X-ray diffractometry with a  $\text{CuK}\alpha$  ray, said lithium-nickel composite oxide exhibits an intensity ratio R ( $(I_{012} + I_{006})/I_{101}$ ) of not greater than 0.50, R being the ratio of the sum of the diffraction peak intensity  $I_{012}$  on the 012 plane and the diffraction peak intensity  $I_{006}$  on the 006 plane to the diffraction peak intensity  $I_{101}$  on the 101 plane.

6. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 5, wherein said positive active material has a mean particle diameter  $D_{50}$  of from 4  $\mu\text{m}$  to 25  $\mu\text{m}$  and a BET specific surface area of from 0.2 to 1.5  $\text{m}^2/\text{g}$ .

7. (currently amended): A non-aqueous electrolyte secondary battery comprising a positive electrode comprising said positive active material defined in ~~any one of~~ Claims 1 to 6, a negative electrode comprising a carbon-based material, and a non-aqueous electrolyte.

8. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a mean particle diameter  $D_{50}$  of from 10.1 to 25  $\mu\text{m}$ .

9. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a BET specific surface area of from 0.37 to 0.69  $\text{m}^2/\text{g}$ .

10. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 8, wherein said positive active material has a BET specific surface area of from 0.37 to 0.69  $\text{m}^2/\text{g}$ .

11. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 8, wherein said positive active material has a mean particle diameter  $D_{50}$  of from 11.5 to 25  $\mu\text{m}$ .

12. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 9, wherein said positive active material has a BET specific surface area of from 0.37 to 0.58  $\text{m}^2/\text{g}$ .

13. (previously presented): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 11, wherein said positive material has a BET specific surface area of from 0.37 to 0.58  $\text{m}^2/\text{g}$ .

14. (canceled).

15. (new): A non-aqueous electrolyte secondary battery comprising a positive electrode comprising said positive active material defined in any one of Claims 5 to 6, a negative electrode comprising a carbon-based material, and a non-aqueous electrolyte.